IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

Criminal Application No. 6022 of 2005

M/s S.B.& T.International Ltd. ..Applicant

vs.

1.State of Maharashtra & Anr. ..Respondents

Shri A.H.H.Ponda for applicant.
Shri Y.R.Shinde, A.P.P. for respondent no.1 State.
Shri Vivek Kantawala for respondent no.2

CORAM: A.M.KHANWILKAR J.
29th NOVEMBER, 2005

P.C.

. Heard counsel for the parties.

2. Rule. By consent, returnable forthwith. Shri Shinde, A.P.P. for respondent no.1 and Shri Kantawala for respondent no.2 waive service. As a short question is involved, by consent the petition is taken for final hearing.

3. This petition questions the correctness of the decision of the 1st Adhoc Additional Sessions Judge, Palghar dated 1st August,2005 in Crim.Rev.application No.41 of 2005. By the said order the Sessions Judge has allowed the revision

application thereby setting aside the order passed by J.M.F.C. Vasai dated 7th August, 2002 issuing process under sec.138 of the Negotiable Instruments Act against respondent no.2 in CC. No.3582 of 2002. The basis on which the Sessions Judge has allowed the revision application in favour of respondent no.2 is that respondent no.2 had produced form no.32 to substantiate the plea that at the relevant time respondent no.2 was not the director of the accused company. No other aspect has been considered in the judgment of the Sessions Judge. In my opinion, the petitioner/complainant is justified in contending that the question whether respondent no.2 continued to be the director in the accused company at the relevant time is a matter for trial. Indeed form no.32 is a public document but even then the said document will have to be proved in evidence in defence by the accused. That by itself cannot be the basis to hold that no offence is made out against the concerned accused. This aspect has been considered in the decision dated 23rd December, 2004 in the case of Vijay Mallya Vs. State of Maharashtra and other (Crim.Application No.4827 of 2004). Applying the principles stated therein this petition ought to

succeed. I am conscious of the fact that the Sessions Court adverted to several other decisions in the impugned judgment but in the abovesaid judgment delivered by me I have considered most of the judgments referred to in the impugned judgment and taken the view that production of form no.32 by itself is not sufficient. Accordingly, this petition is allowed. The impugned judgment is set aside with the directions to the Trial Court to proceed with the trial in accordance with law uninfluenced by any observations made in the impugned judgment or for that matter in the present order.

4. Counsel for respondent no.2 submits that atleast personal presence of respondent no.2 before the trial court may be dispensed with. Counsel for the applicant has no objection to show that indulgence to respondent no.2. Accordingly respondent no.2 is exempted from appearing before the Trial Court except for recording of plea and statement under sec.313 as and when required.